Supreme Court, U. S.
FILED
JAN 13 1981
MICHAEL RODAK, JR., CLERK

NO. 80-970

in the Supreme Court of the United States

OCTOBER TERM, 1980

JESSE M. McCRARY, JR., as Secretary of State of Florida, MARY SINGLETON as Director of Division of Elections, State of Florida, ROBERT L. SHEVIN, as Attorney General of Florida; and WALLACE KING, Chairman of Florida Election Commission, ANNE KELLY, JAMES MATTHEWS, BENJAMIN JOHNSON, HELEN LESLIE, JAMES McKILLIPS and ROBERT HUCKSHORN, Members of the Florida Elections Commission,

Appellants,

vs.

LET'S HELP FLORIDA, a Political Committee and PAUL M. BRUUN,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

MOTION TO AFFIRM

TOBIAS SIMON, Esquire
Simon, Schindler, & Tripp, P.A.
1492 South Miami Avenue
Miami, Florida 33130
Tel: (305) 358-8611
Attorneys for Appellees

TABLE OF AUTHORITIES

CASES	Page
Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)	4, 5, 6, 7, 9
Citizens Against Rent Control v. City of Berkeley, 27 Cal.3d 819, 614 P.2d 742, 167 Cal. Rptr. 84 (1980)	7, 8, 9
First National Bank of Boston v. Bellotti, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978)	4, 6, 9
Hicks v. Miranda, 422 U.S. 332, 95 S.Ct. 2281, 45 L.Ed.2d 223 (1975)	4
Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980)	3

OTHER AUTHORITIES

Page

Florida Statutes §106.08(1) 2, 3

Amend. I, U. S. Const. 2, 3, 4, 5, 6, 7

Cox, The Supreme Court 1979 Term-Foreward: "Freedom of Expression in the Burger Court," 94 Harv. L.Rev. 1 (1980) 4, 5, 9, 10

NO. 80-970

in the Supreme Court of the United States

OCTOBER TERM, 1980

JESSE M. McCRARY, JR., as Secretary of State of Florida, et al.,

Appellants,

vs.

LET'S HELP FLORIDA, a Political Committee and PAUL M. BRUUN,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

MOTION TO AFFIRM

Appellees, pursuant to Rule 16 of the Rules of The Supreme Colurt of the United States, move that the Final Judgment of the United States Court of Appeals,

Fifth Circuit, be affirmed on the ground that the question is so unsubstantial as not to warrant plenary review.

STATEMENT

This is a direct appeal from the final judgment entered on July 11, 1980 by the United States Court of Appeals, for the Fifth Circuit, which affirmed the District Court's injunction against the enforcement of Section 106.08(1) Florida Statutes, as being in violation of the First Amendment of the United States Constitution. Rehearing was denied on the 10th day of September, 1980.

ARGUMENT

The decision of the United States Court of Appeals, Fifth Circuit, 421 F.2d 195 (5th Cir. 1980), is plainly correct. The Fifth Circuit held that the First Amendment prohibits restrictions on the amount of money individuals and associations may spend in political referenda, thus invalidating Section 106.08(1), Fla. Stat.[1] This holding

[1]Florida Statutes §106.08(1) provides:

106.08 CONTRIBUTIONS: LIMITATIONS ON. –
(1) NO PERSON OR POLITICAL COMMITTEE SHALL MAKE CONTRIBUTIONS TO ANY CONDIDATE OR POLITICAL COMMITTEE IN THIS STATE, FOR ANY ELECTION, IN EXCESS OF THE FOLLOWING AMOUNTS:
(a) TO A CANDIDATE FOR COUNTYWIDE OFFICE OR TO A CANDIDATE IN ANY ELECTION CONDUCTED ON LESS THAN A COUNTYWIDE BASIS, $1,000.
(b) TO A CANDIDATE FOR LEGISLATIVE OR MULTICOUNTY OFFICE, $1,000.
(c) TO A CANDIDATE FOR STATEWIDE OFFICE, $3,000.
(d) TO ANY POLITICAL COMMITTEE IN SUPPORT OF, OR IN OPPOSITION TO, AN ISSUE TO BE VOTED ON IN A STATEWIDE ELECTION, $3,000.
(e) TO ANY POLITICAL COMMITTEE IN SUPPORT OF, OR IN OPPOSITION TO, AN ISSUE TO BE VOTED ON IN A COUNTYWIDE, DISTRICTWIDE, OR LESS THAN COUNTYWIDE ELECTION, $1,000.
(f) TO A POLITICAL COMMITTEE SUPPORTING OR OPPOSING ONE OR MORE CANDIDATES, $1,000.
(g) TO A CANDIDATE FOR COUNTY COURT JUDGE OR CIRCUIT JUDGE, $1,000.
(h) TO A CANDIDATE FOR RETENTION AS A JUDGE OF A DISTRICT COURT OF APPEAL, $2,000.
(i) TO A CANDIDATE FOR RETENTION AS A JUSTICE OF THE SUPREME COURT, $3,000.

is the ineluctable consequence of the decisions in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) and *First National Bank v. Bellotti*, 435 U.S. 765, 98 S.Ct.1407, 55 L.Ed.2d 707 (1978).[2] The present issue of the First Amendment protection of expenditures in a political referendum, as distinguished from expenditures in a political campaign to elect an office holder, was not raised in *Buckley v. Valeo, supra*, because *Buckley* involved federal election laws. Since no national referenda occur, this Court, in *Buckley v. Valeo, supra*, could not make a determination as to the validity of restrictions on campaign expenditures in the context of a state referendum election. However, the court's explicit reasoning in *Buckley v. Valeo, supra*, provides clear support for the Fifth Circuit's decision herein.

The federal election law examined in *Buckley v. Valeo, supra*, was drafted in order to allay the public's fear of the affect that campaign contributions have on elected officials:

> Senator Russell Long once observed: 'When you are talking in terms of large campaign contributions . . . the distinction between a campaign contribution and a bribe is almost a hair's line difference.'
> Cox, The Supreme Court 1979 Term-Foreward: "Freedom of Expression in the Burger Court", 94 Harv. L. Rev. 1 at 56 (1980), citing, Hearings on S.3496, Amendment No. 732 S. 2006, S.

---

[2]This Court's imprimatur on the issue in this case would be established by summary affirmance. *Hicks v. Miranda*, 422 U.S. 332, 95 S.Ct. 2281, 45 LE.2d 223 (1975).

2965 and S. 3014 before Senate Comm. on Finance; 89th Congress 2d. Sess. 78 (1966).[3]

In order to prevent campaign contributions from affecting the actions of elected officials, the federal election law required detailed financial disclosure and placed limits on the amount of *contributions* which a candidate was able to accept. The federal election law further placed a ceiling on personal, family and aggregate *expenditures.*

In *Buckley v. Valeo, supra,* the court sustained the ceilings on contributions to candidates, but declared void the ceilings on expenditures. This court held that the First Amendment protects political expenditures as fully as speech itself:

> [T]his Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a non-speech element or to reduce the exacting scrutiny required by the First Amendment.
>
> • • •
>
> A restriction on the amount of money a person or group can spend on a political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration and the size of the audience reached.

Id. 424 U.S. 1, 16-19 (1976); *See also,* 94 Harv.L. Rev. 1 at 59-60.

---

[3]*See also* 94 Harv. L. Rev. 1 at n. 254.

Although the danger of corruption through money is obviously greater in the context of an election than of a referendum,[4] this court held in *Buckley v. Valeo, supra*, that the First Amendment prohibits restrictions on the right of an individual to spend unlimited sums to advocate the election of a candidate of his choice, the only caveat being that his expenditures must not be "coordinated" with those of the candidate.

Since expenditures for a referendum election can never pose the danger of corrupting a candidate, nor can expenditures be coordinated with those of a candidate, the reasoning of *Buckley v. Valeo, supra*, compels the

---

[4]Justice Powell, in *First National Bank v. Bellotti, supra*, commented in his footnote that the danger of corruption is manifestly greater in an election than in a referendum:

> The overriding concern behind the enactment of statutes such as the Federal Corrupt Practices Act was the problem of corruption of elected representatives through creation of political debts. The importance of the government interest in preventing this occurrence has never been doubted. The case before us presents no comparable problem, and our consideration of a corporation's right to speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office. Congress might well be able to demonstrate the existence of a danger of real or apparent corruption in independent expenditures of corporation to influence *candidate* elections. (emphasis added.)

435 U.S. at 788 n. 26 (citations omitted).

logical conclusion that the First Amendment prohibits any limitation on expenditures in the context of a referendum election.

A restriction on expenditures by people would not only offend First Amendment guarantees, but would also create further constitutional and practical dilemas. Assuming arguendo that expenditures could be restricted, would the restrictions also limit the valuable endorsement made by newspaper editorials, or could we limit only the expenditures of non-press persons?

In the context of a referendum it is true that there may exist the opportunity for the rich to speak louder or more effectively than the poor. The First Amendment, however, prohibits equalizing the rich and poor in their ability to express themselves. This court stated in *Buckley v. Valeo, supra,:*

> . . . But the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the first amendment, which was designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources,' " and " 'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' "

Id. at 424 U.S. 48-49 (1976) (cites omitted).

The Supreme Court of California in *Citizens Against Rent Control v. City of Berkeley,* 27 Cal.2d 819, 614 P.2d 742, 167 Cal. Rptr. 84 (1980), flagrantly defied the

above edict from the United States Supreme Court in upholding a legislative enactment similar to the one sub-judice, based upon the explicit finding that the equalizing of elector voices regardless of wealth serves a compelling state interest, saying:

> There can be no doubt that government regulation designed to preserve the integrity of the initiative and referendum promotes a goal of the highest priority. As will appear, the Berkeley ordinance serves this compelling interest in a manner that does not frustrate another important aim of the electoral process: i.e. that all be given an opportunity to be heard so as to assure the wildest dissemination of opinions on important public questions.

167 Cal Rptr. at 87.[5]

The California court further held:

> We conclude that the Berkeley ordinance does not interfere with effective advocacy or dissemination of information by all sides to a ballot measure controversy, but instead is designed to preserve initiative and referendum

---

[5]*Citizens Against Rent Control v. City of Berkeley*, 167 Cal. Rptr. 84 (1980) quotes the purpose of the Ordinance:

> Thus the Berkeley Election Reform Act begins with the declaration that "Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth. . . .

Id. at n.5.

> elections for the salutary purpose for which they were created, and tends to prevent the corruption of the political process that otherwise results.

167 Cal. Rptr. at 90.

If the decision in *Citizens Against Rent Control v. City of Berkeley*, 167 Cal. Rptr. 84 (1980) is ultimately reviewed by this Court, it should be overturned:

> Restrictions on spending in the context of a referendum election have been addressed by the Supreme Court only in the case of *First National Bank v. Belotti, supra.* In that case, this court determined that a corporation could not be prohibited by a state from spending money in a referendum election. The issue was not raised as to whether there could be limits on the amount of money corporations or other people could spend.
>
> The decision in *Belotti, supra*, logically extends from *Buckley v. Valeo, supra*, wherein this court held that independent expenditures, however, large, are pure speech and present insufficient danger of undue influence upon a candidate's conduct in office to justify restrictions unless they are "controlled by or coordinated with" the candidate, in which case they would be treated as contributions. 94 Harv.L.Rev. *supra* at 68. In *Belotti, supra*, this court determined that corporate expenditures in a referendum election are also speech, and speech cannot be curtailed because of the character of the "speaker", whether a corporation or labor union. Id. Archibald Cox, in a Harvard Law Review article, synthesizes *Buckley, supra* and *Belotti, supra:*

> According to both opinions, the danger that individual ideas and voices will be drowned out by massive advertising campaigns is not sufficient to justify prohibiting vast expenditures for political advertising by individuals or corporations. 94 Harv.L.Rev., *supra* at 68.

We respectfully submit, therefore, that the appellants present no substantial question for the decision of this court, and the judgment and decree of United States Court of Appeals, Fifth Circuit, should be affirmed.

CONCLUSION

Based upon the foregoing argument, Appellees respectfully request that this court summarily affirm the decision of the United States Court of Appeals, Fifth Circuit.

Respectfully submitted,

SIMON, SCHINDLER & TRIPP, P.A.
Attorneys for Appellees
1492 South Miami Avenue
Miami, Florida 33130
358-8611

By:/s/ _____
TOBIAS SIMON

DATED ___ day of January, 1981.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Motion to Affirm were furnished by United States Mail to the Honorable JIM SMITH, Attorney General, State of Florida, The Capitol, Tallahassee, Florida; and to ANTHONY C. MUSTO, Assistant Attorney General, State of Florida, Chief Counsel, Miami Division, Department of Legal Affairs, Ruth Bryan Owen Rohde Building, Florida Regional Service Center, 401 N.W. Second Avenue, Miami, Florida this day of January, 1981. I further certify that all parties required to be served have been served.

RESPECTFULLY SUBMITTED,

SIMON, SCHINDLER & TRIPP, P.A.
1492 South Miami Avenue
Miami, Florida 33130
Tel: (305) 358-8611

By: /s/_____
TOBIAS SIMON